

No. 11843

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, a Corporation,

Appellee.

PACIFIC ELECTRIC RAILWAY COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the Judgment of the District Court of the
United States for the Southern District of California,
Central Division.

SUPPLEMENTAL BRIEF FOR PACIFIC ELECTRIC RAILWAY COMPANY.

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**SUPPLEMENTAL BRIEF FOR PACIFIC
ELECTRIC RAILWAY COMPANY.**

During argument of the appeal in the above matter, question was raised as to the connection between the freight shipments described in the petition and certain of the bills of lading specifically referred to in the judgment. In order to clarify this question, the Court granted Pacific Electric Railway Company leave to file a supplemental brief.

When Pacific Electric Railway Company submitted bills covering the freight shipments described in the petition,

the Government made certain deductions from these freight bills based on alleged overpayments of prior freight bills. This was done pursuant to Section 322 of the Transportation Act of 1940, which provides as follows :

“Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier.”

If these prior bills were overpaid, the deductions from the subsequent bills were proper and Pacific Electric Railway Company should not recover the deducted amounts in this proceeding. If the deductions were improper, Pacific Electric Railway Company should recover these amounts. Therefore, the propriety of these deductions becomes a material issue in this case.

At the time of trial, it was agreed between the parties that the issues as set forth in the stipulation of facts were the issues to be decided in this case. This is shown in the following portion of the record on page 60:

“The Court: Are you agreed, gentlemen, that the case will be tried now upon the issues as raised by the stipulation on file?”

Mr. Yeomans: That is perfectly agreeable to the plaintiff.

Mr. Margolies: And likewise to the defendant.”

The stipulation referred to is set forth in the record on pages 14 to 40. This stipulation of facts traces in detail the connection between the shipments as contained in the petition and the shipments on which deductions were made. There were four carrier's bills referred to in the petition, being carrier's bills Nos. F-18436-3, F-26475-1, F-21750-7 and F-27095-2.

Bill No. F-18436-3 was for \$1,093.39, which was the full commercial rate. The Government paid the land-grant rate of \$717.99, and the difference of \$375.40 is the amount in dispute. [R. 23-24.]

Bill No. F-26475-1 was for \$3,272.81, which was the full commercial rate. The Government paid \$212.70 cash and deducted \$3,060.11 for claimed overpayments on prior bills, these deductions being the difference between the commercial rate and the land-grant rate on the shipments in the prior bills. Pacific Electric Railway Company agreed that \$706.75 of the \$3,060.11 deducted was proper, leaving a balance of \$2,353.36 in dispute. Four of the shipments on which these deductions were based were the shipments which the District Court awarded judgment for Pacific Electric Railway Company in the amount of \$1,143.66 on the ground that title to the materials shipped was not in the Government at the time of shipment, these four shipments being covered by Government bills of lading Nos. MC-88579, MC-22992, MC-28270 and MC-34759. [R. 24-34.]

Bill No. F-21750-7 was for \$13,778.46 which was the full commercial rate. The Government paid \$7,547.26 cash, deducted \$918.58 for claimed overpayments of prior bills, and disallowed \$5,312.62 which is the difference between land-grant rates and full commercial rates. Pacific

Electric Railway Company agreed that the deduction of \$918.58 was proper, leaving amount in dispute of \$5,312.62. It should be noted that there is a difference of \$3.91 between the amount prayed for in the petition and this amount. It was found after filing the petition that an error had been made in computation of the proper rate in regard to this bill, and the stipulation set forth the correct amount. [R. 34-35.]

Bill No. F-27095-2 was for \$1,776.44 which was the full commercial rate. The Government paid \$874.00 cash and deducted \$902.44 for claimed overpayments of prior bills. This \$902.44 deduction was the difference between the commercial rate and land-grant rates on shipments in two prior bills, and is the amount in dispute. [R. 36-39.]

The findings of fact in this case found that the facts contained in the stipulation were true. The stipulated facts included not only the facts alleged in the petition but also the additional facts which are necessary to decide the case. All of the matters included in the judgment arose directly from the matters contained in the petition.

Respectfully submitted,

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